

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
HENRY BROOKS,

Plaintiff,

-against-

NORMAN SEABROOK,

Defendant.
-----X

:
:
:
:
:
:
:
:
:
:

REPORT AND RECOMMENDATION

13-CV-9210 (GBD) (KNF)

KEVIN NATHANIEL FOX
UNITED STATES MAGISTRATE JUDGE

TO THE HONORABLE GEORGE B. DANIELS, UNITED STATES DISTRICT JUDGE

On December 31, 2013, the plaintiff, Henry Brooks (“Brooks”), commenced this action by filing a complaint with the Clerk of Court. On July 2, 2014, the undersigned issued an order directing Brooks to file proof of service of the summons and complaint, with the Clerk of Court, on or before August 1, 2014. In that order, the Court cautioned Brooks that failure to file proof of service would result in a report to your Honor recommending a sanction which might include dismissing this action. As of the date of this report, Brooks has neither filed proof of service of the summons and complaint with the Clerk of Court, nor submitted any writing to the Court indicating good cause for his failure to do so.

Fed. R. Civ. P. 4(m) provides in pertinent part, that “[i]f a defendant is not served within 120 days after the complaint is filed, the court – on motion or on its own after notice to the plaintiff – must dismiss the action without prejudice against that defendant or order that service be made within a specified time.” Fed. R. Civ. P. 4(m). In addition, Fed. R. Civ. P. 41(b) authorizes a district court to dismiss an action for failure to prosecute, or to comply with a court order. See LeSane v. Hall’s Sec. Analyst, Inc., 239 F.3d 206, 209 (2d Cir. 2001); Lucas v.

Miles, 84 F.3d 532, 534-35 (2d Cir. 1996). Based on the facts set forth above, dismissing Brooks's complaint for failing to: (i) serve the complaint on the defendant within the time allotted; and (ii) prosecute the action, is warranted.

RECOMMENDATION

For the foregoing reasons, I recommend that your Honor dismiss the instant action pursuant to Fed. R. Civ. P. 4(m) and 41(b).

FILING OF OBJECTIONS TO THIS REPORT AND RECOMMENDATION

Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b)(2) of the Federal Rules of Civil Procedure, the parties shall have fourteen (14) days from service of this Report to file written objections. See also Fed. R. Civ. P. 6. Such objections, and any responses to objections, shall be filed with the Clerk of Court, with courtesy copies delivered to the chambers of the Honorable George B. Daniels, 500 Pearl Street, Room 1310, New York, New York 10007, and to the chambers of the undersigned, 40 Centre Street, Room 425, New York, New York 10007. Any requests for an extension of time for filing objections must be directed to Judge Daniels. *Failure to file objections within fourteen (14) days will result in a waiver of objections and will preclude appellate review.* See Thomas v. Arn, 474 U.S. 140, 470 (1985); IUE AFL-CIO Pension Fund v. Herrmann, 9 F.3d 1049, 1054 (2d Cir. 1993); Frank v. Johnson, 968 F.2d 298, 300 (2d Cir. 1992); Wesolek v. Canadair Ltd., 838 F.2d 55, 58-59 (2d Cir. 1988); McCarthy v. Manson, 714 F.2d 234, 237-38 (2d Cir. 1983).

Dated: New York, New York
September 5, 2014

Copy mailed to:

Henry Brooks

Respectfully submitted,



KEVIN NATHANIEL FOX
UNITED STATES MAGISTRATE JUDGE